

THE WHITE HOUSE
WASHINGTON

November 17, 1969

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MEMORANDUM FOR THE PRESIDENT

FROM: Henry A. Kissinger *X*
SUBJECT: NSC Meeting on CBW, November 18

The NSC meeting is intended to consider the basic U. S. policy issues relating to Chemical and Biological Warfare (CBW).

The objective of the meeting is to establish a policy framework for future CBW programs which will be consistent with both national security and arms control objectives. Because the subject of CBW is highly complex, it will be possible during the meeting to address only the key issues. Your decisions on these issues, however, will provide the policy direction for the groups of sub-issues.

There is consensus on a number of policy aspects of CBW. All agree that there is need for:

- Continuing research and development, with emphasis on defense.
- Refinement of controls and safety measures.
- Better intelligence on other nations' CBW capabilities.
- Doctrinal reliance on a "no first-use" policy for lethal chemical and biological weapons.
- A closely coordinated public affairs policy.

Attached and tabbed are:

- Your talking points, which will introduce the subject and structure the discussion. Briefings are called for by Mr. Helms and General Wheeler. I would propose to lead the discussion centering about the key issues. When I complete my outline of the issues, I suggest that you call on appropriate participants at the meeting for their views. Your talking points proceed in this way.

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- An "Issues for Decision" paper which includes my recommendation on each of the issues.

You need to read only your talking points and the "Issues for Decision" paper. Additional background material is enclosed in a separate background book.

Briefly summarized, the topics for discussion are:

1. Policy on Biological Weapons

Specific Issues for Decision

- a. Should we retain a capability for combat use of lethal or incapacitating biological weapons? If not, what should be the extent of research and development on biological weapons?
- b. Can we or should we support the UK Draft Convention which would prohibit development, production and use of biological weapons?

2. Policy on Chemical Weapons

Specific Issues for Decision

- a. Should we retain a capability for use of lethal or incapacitating chemical weapons or should we confine our chemical programs to research and development?
- b. If we wish to retain a lethal chemical capability should we maintain stockpiles overseas?
- c. If we wish to retain an incapacitating chemical capability should the "no first-use" policy apply to them as well as to lethal chemicals?

3. Policy on Tear Gas and our Position Toward the Geneva Protocol

Specific Issues for Decision

- a. Do we wish to continue unrestricted use of tear gas in Vietnam and to keep this option open for the future?

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- b. Do we wish to ratify the Geneva Protocol which bans first use of chemical and biological weapons?
- c. If so, are we willing to include incapacitating agents and tear gas within the strictures of the protocol or can we interpret the protocol to exclude them?

4. Policy on Authorization for Use of Tear Gas and Herbicides

Specific Issues for Decision

- a. Should Presidential authorization be required for the use of tear gas and herbicides outside of Vietnam as it is for all other chemical and biological weapons?
- b. If not, to what level should the authority be delegated?

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ISSUES FOR DECISION

There are four principal policy issues for decision. Each major issue subsumes an additional number of specific questions.

I. POLICY ON BIOLOGICAL WARFARE (BW)

There are two questions to be decided.

A. What should be the nature and scope of U.S. policy on biological warfare? There are four options:

1. Retain a Full Capability Including Both Lethal and Incapacitating Biological Weapons.
 2. Retain a Capability for Incapacitating Weapons Only.
 3. Research and Development Program Only, but for both Offensive and Defensive Purposes.
 4. Research and Development Program for Defensive Purposes Only and to Protect against Technological surprise.
- Some argue that we should retain a full BW capability because (1) a lethal BW capability helps deter BW attack and gives us another strategic option; (2) because it would take considerable time to reconstitute stockpiles and delivery means; and (3) because biological incapacitants - the only effective incapacitating capability we maintain - could be useful in military operations such as amphibious invasion.
- Others argue that we should maintain a research and development program only because (1) our nuclear deterrent serves to deter strategic use of lethal BW; (2) the control and effectiveness of BW weapons are uncertain as are the deterrent or retaliatory value of incapacitants; (3) though they could possibly be useful in a "first-use" situation, such use could risk escalation and would be considered by most nations to be contrary to the international law; and (4) a research and development program would protect against technological surprise.

All agencies, except the Joint Chiefs, support Option 4.

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Recommendation: That you approve Option 4, (research and development for defensive purposes) to include only enough offensive research and development to protect against technological surprise.

B. Should the U.S. support the U.K. Draft Convention for the Prohibition of Biological Warfare? There are three options:

1. Defer any decision.
 2. Associate in principle only.
 3. Do not support.
- If our BW policy is to concentrate on research and development for defensive purposes (Option 4) we can support the Convention. Under any other policy we would have to oppose it or seek major modifications. The Convention provides for no on-site verification, but relies on procedures for investigation of treaty violations by agencies under UN auspices. Also, its relation to other CBW arms control proposals is unclear. No one argues that we should agree to the Convention as it stands.
- Some argue that we should associate in principle (1) to evidence our willingness to consider limitations on biological warfare, particularly if we maintain a research and development program only, and (2) because we could gain political benefits without tying our hands until questions such as scope of the Convention and suitable verification procedures were resolved.
- Others contend that there is no urgency to consider the Convention and that any association with it might weaken our opposition to unverifiable provisions in other arms control proposals.

Recommendation: That you approve Option 2 (Association in Principle) subject to the satisfactory resolution of such questions as verification procedures and the relation of the U.K. Draft Convention to other arms control measures.

II. CHEMICAL WARFARE (CW) POLICY ISSUES

There are three basic issues.

- A. Should we maintain a lethal chemical capability and if so where and at what level should we maintain stocks? There are two options:

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1. Maintain lethal chemical stockpiles for deterrence or retaliation:
 - a. In the U. S. only.
 - b. In the U. S. and overseas.
 2. Rely on Research and Development only.
- Some argue that we need lethal chemicals (1) to deter chemical attack, and (2) as a retaliatory option between a conventional response (which might be inadequate) and escalation to nuclear response. They also argue (1) that unilateral elimination of this capability would give up a valuable bargaining counter in arms control discussions and, (2) that so long as we maintain our declaratory policy of "no-first-use" the international political costs of retaining the capability are not excessive. They contend that stocks should be maintained overseas (particularly in Germany) to assure the capability for timely response and because, were they to be removed, attempts to replace them in a crisis could be both difficult and provocative. The JCS also believe that existing stocks of mustard gas should be retained until improved agents are developed because they represent a large portion of existing casualty producing chemical stocks.
- Others argue that (1) our tactical nuclear capability makes lethal chemicals unnecessary as a deterrent, and (2) that existence of the chemical capability may encourage chemical attack because the threshold of response appears lower to the enemy. They believe that an offensive and defensive research and development program would guard against technological surprise and the improvement of defensive measures could lessen the likelihood of chemical attack because of inevitable enemy uncertainty about the true extent of our CW capabilities. They contend that, in any event, we should not retain stocks overseas because (1) existing stocks are too small for an adequate response and to increase them would cause political problems with our allies; (2) needed chemical support to theaters of operation can be provided from the United States quickly; and (3) continued presence of these stocks, particularly in Germany, could become a source of friction. They argue further that mustard gas is far less effective than our other

chemical weapons and that its destruction would yield political benefit. The Secretary of Defense favors destruction of mustard gas.

Recommendation: That you approve retention of a lethal chemical capability and retention of the stocks in Germany (Option 1-b). That you also approve the Secretary of Defense's recommendation to destroy or detoxify the stocks of mustard gas, but in a phased manner to assure an adequate capability while the development of safer weapons is in progress.

B. Should the U. S. "no first-use" policy on lethal chemicals apply also to incapacitating chemicals? Two options:

1. Affirm that the U. S. policy of "no first-use" applies also to incapacitants.
 2. Exclude incapacitants from a "no first-use" policy.
- All agencies support our declaratory policy of "no first-use" for lethal chemicals but there are differing views as to whether it should apply to incapacitants. The incapacitant we now have is not an operationally effective agent because of its uncertain effects, but research is continuing with some promise of development.
 - The proponents of including incapacitants in the policy argue that (1) their deterrent or retaliatory value is questionable, and their principal utility would be in a "first-use" situation against an unprotected enemy; and (2) that most nations would see such use contrary to the Geneva Protocol, international law and past expressions of U. S. policy. They argue also that first-use could lead to escalation to lethal chemicals, and loosen international constraints on chemical warfare.
 - The opponents argue that an effective agent, if developed, could give military advantage in a variety of situations with fewer casualties and might be accepted internationally as more "humane" than other weapons.
 - The JCS position is uncertain but they probably favor retaining a "first-use" option. The Secretary of Defense may, and all other agencies will, support including incapacitants in our no "first-use" policy.

Recommendation: That you approve a "no first-use" policy for incapacitants with the understanding that this does not

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preclude continued research and development toward an effective agent.

III. THE USE OF TEAR GAS AND/OR HERBICIDES AND THE GENEVA PROTOCOL.

The United States signed the Geneva Protocol in 1925 but has not ratified it. The Protocol in effect bans the first-use of chemical and biological weapons but the question as to whether tear gas and herbicides are included under this ban is unresolved within the bureaucracy. Our policy as to future use of tear gas and herbicides may affect when and how we ratify the Protocol if we want to do so. There are two questions to be decided.

A. Should we maintain the option for unrestricted use of tear gas in war in Vietnam and in the future or adopt a more limited policy?
There are three options:

1. Unrestricted use to give us full military advantage when and if we want it.

2. Limited use.

3. No use in war except for riot control.

-- The proponents of unrestricted use argue that, used with conventional weapons in Vietnam, tear gas has been effective in limiting U. S. casualties and in restricting enemy mobility. Moreover, we should not forego the advantages it affords us now, nor should we foreclose our options for the future. They contend that limitation on its use would also cast doubt on the legality of our practices in Vietnam.

-- The opponents contend that the advantages in Vietnam may not accrue in other situations where enemy defenses are more effective, or where the enemy has an appreciable chemical capability of his own. They argue also that most nations consider the Geneva Protocol prohibits the use of tear gas except for crowd control and that a policy of "no use" or limited use for "humanitarian" purposes would make it possible for us to ratify the Geneva Protocol with less difficulty than a policy of unrestricted use. No agency, except possibly Arms Control and Disarmament, proposes limitations on use in Vietnam.

Recommendation: That you approve continued unrestricted use of tear gas in Vietnam, but defer decision as to future use.

B. Should the U. S. ratify the 1925 Geneva Protocol and, if so, with what if any reservations or interpretations?

The Geneva Protocol prohibits "use in war and asphyxiating, poisonous and/or other gases. . . and Bacteriological Methods of Warfare". The position we can take toward ratification depends primarily on whether we wish to continue our use of tear gas in Vietnam and to a lesser extent on whether we wish to exclude incapacitating agents from our "no first-use" policy.

If we were to forego the use of tear gas and apply the "no first-use" policy to incapacitants we could ratify the protocol without reservation or interpretation.

If we want to exclude incapacitants from the "no first-use" policy, ratification is all but out of the question since most parties to the protocol would reject such a reservation.

If we wish to continue using tear gas we could ratify either with a legal interpretation that the Protocol does not prohibit use of tear gas or with a statement of understanding to this effect.

- Proponents argue that ratification (1) would strengthen the legal force of the Protocol and international restraints on proliferation of BW and CW, (2) would be welcomed internationally as a positive step reinforcing our past statements, and (3) could enhance our position in any future CBW arms control negotiations.
- Others argue that ratification would impose undesirable legal inhibitions on our freedom to use these weapons first when it might be in our interest to do so. Also, willingness to accept limitation of tear gas would forego a weapon of proven utility in Vietnam and cast doubt on the legality of use there.

JCS probably oppose ratification and at least would want to reserve incapacitating agents and tear gas from the prohibitions of the Protocol. The Secretary of Defense may support ratification as long as we keep our options open on the use of tear gas. The Secretary of State favors ratification with a statement of understanding (not a legal reservation) stating our position on the use of tear gas.

Recommendation: That you approve ratification without a legal (formal) reservation but with a statement of our understanding that the provisions of the Protocol do not prohibit use of tear gas in war.

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AUTHORIZATION POLICY

The issue is whether the use of tear gas and herbicides in war, other than in Vietnam, should require Presidential authorization as is the case for all other chemical and biological weapons. Use of tear gas and herbicides do not now require such authorization. There are three options:

1. Require Presidential Authorization.
2. Delegate authority to the Secretary of Defense
 - (a) for tear gas and herbicides or
 - (b) for herbicides only
3. Require no prior authorization.
 - Those favoring Presidential authorization argue that (1) the political implications of unrestricted use of these weapons particularly tear gas and anti-crop herbicides are grave, as demonstrated by our experience in Vietnam. Furthermore, we should not authorize future use until the situation in which they would be employed is clear.
 - Others argue that these are non-lethal weapons of proven utility and maximum flexibility for their use should be retained. They contend that the authority at minimum should be delegated to permit planning and development of logistic support for use. They contend that defoliants in particular should require no prior authorization because they are of proven benefit in reducing U. S. casualties and criticism of their use has not been great.

JCS probably prefer that no prior authorization be required for the use of tear gas and herbicides. The Secretary of Defense probably would prefer delegation of authority to him. The Secretary of State may argue for a delegation to the Secretary of Defense provided that decision to authorize use would require his concurrence.

Recommendation: That you require Presidential Authorization for the use of tear gas and anti-crop herbicides (Option 1) and a delegation to the Secretary of Defense to authorize use of defoliants.

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